



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 11-53

Project Plan No. 92002002B

Project Name: Martens Property (formerly Fairfield at Germantown)

Date of Hearing: June 23, 2011

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Division 59-D-2, the Montgomery County Planning Board ("Planning Board") is vested with the authority to review project plan applications; and

WHEREAS, on January 4, 2011, Buchanan Acquisitions, LLC ("Applicant"), filed an application for approval of a project plan for 455 dwelling units (including 12.5% MPDUs) and 14,486 SF of commercial uses ("Project Plan"), on 26.48 acres of RMX-2-zoned land, near the intersection of Wisteria Drive and Waters Road in Germantown ("Property" or "Subject Property"); and

WHEREAS, Applicant's project plan application was designated Project Plan No. 92002002B, Martens Property (the "Application"); and

WHEREAS, Planning Board Staff ("Staff") issued a memorandum to the Planning Board, dated June 8, 2011, setting forth its analysis of, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on June 23, 2011, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on June 23, 2011, the Planning Board approved the Application subject to conditions, on the motion of Commissioner Dreyfuss; seconded by Commissioner Wells-Harley; with a vote of 5-0, Commissioners Anderson, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor.

Approved as to
Legal Sufficiency:

Christina Sorrent 9/1/11
M-NCPPC Legal Department

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NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board APPROVES Project Plan No. 92002002B for 455 dwelling units (including 12.5% MPDUs) and 14,486 SF of commercial uses, on 26.48 gross acres in the RMX-2 zone, subject to the following conditions:

1. Project Plan Conformance

The proposed development must comply with the conditions of approval for Project Plan No. 920020020, except as modified by this Application.

2. Site Plan Conformance

Site Plan No. 82003003B must be amended to allow the proposed increase in residential density on the 62.4-acre site prior to approval of the subject Application.

3. Previous Approvals

All previous approvals remain in full force and effect unless modified by this Application.

4. Development Ceiling

The proposed development for Phase II (26.48 acres) is limited to a 0.74 FAR including 14,486 SF of commercial uses and 455 dwelling units.

5. Housing

The development must provide a minimum of 12.5 percent as MPDUs onsite, consistent with the requirements of Chapter 25A.

6. Building Access Points

- a) The multi-family buildings fronting on Waters Road must have a minimum of one (ideally more) pedestrian ingress/egress points off Waters Road for the residential units.
- b) The commercial portion of this development must be located along Waters Road and have individual pedestrian ingress/egress points off Waters Road.

7. Transportation

The Applicant must reconstruct Waters Road to include a minimum 31-foot wide pavement width with curb and gutter and street trees within a minimum 51-foot-wide right-of-way as shown on the Project Plan as Option 2, and with the addition of street trees on the east side of the road. Alternatively, if the full 70-foot right-of-way becomes available through dedication by others before the Applicant commences reconstruction of Waters Road, the Applicant must reconstruct

Waters Road to include a 38-foot-wide pavement width with curb and gutter and street trees as shown on the Project Plan as Option 1.

8. Waters Road Connection to MD 118

The Applicant must design the final alignment and identify future dedications for the construction of the Waters Road connection to MD 118 prior to approval of the Applicant's preliminary plan.

9. Forest Conservation

Prior to certified site plan, submit a revised Final Forest Conservation Plan specifying either on-site or off-site methods to meet the afforestation requirements of the site.

10. Public facilities and amenities

- a) The public facilities and amenities provided must include at a minimum a clubhouse with an indoor exercise room and an indoor community space, a swimming pool, a wading pool, two tot lots, two open play areas, nine seating areas, a dog park (if permitted by site conditions), and a pedestrian system. However, the Planning Board may approve other facilities that are equal to or better than these at the time of site plan approval.
- b) The final design and details of the public facilities and amenities will be determined during site plan review.
- c) The proposed Green Commons area must front on Waterford Hills Boulevard and be easily and readily accessible to the general public.

11. Rough Grading

Rough grading of the site and demolition of existing structures can be performed prior to Site Plan or Preliminary Plan approval provided the Final Forest Conservation Plan has been approved, a Rough Grading Sediment Control Plan to minimize soil erosion is approved, and M-NCPPC performs an inspection and approval of all tree-save areas and protection devices.

12. Coordination for Additional Approvals Required Prior to Preliminary Plan and Site Plan Approval

- a) The Applicant must obtain written approval from the Montgomery County Department of Transportation (MCDOT) for the final design and extent of any and all streetscape improvements within the rights-of-way.
- b) The Applicant must submit the traffic signal warrant analyses at preliminary plan consistent with the MCDOT's request.
- c) The final cross-section and right-of-way dimensions for Waterford Hills Boulevard and Waters Road will be finalized at the time of preliminary plan approval in coordination with MCDOT using the new Context Sensitive Design standards.

- d) A detailed development program including project phasing and construction of amenities and Waters Road improvements will be required prior to approval of the certified site plan.
- e) The final details of the noise study and follow-up recommendations will be determined at the time of site plan approval.

BE IT FURTHER RESOLVED that, having given full consideration to the recommendations and findings of its Staff, which the Planning Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record and all applicable elements of § 59-D-2.43, the Montgomery County Planning Board, with the conditions of approval, FINDS:

(a) The proposed development complies with all of the intents and requirements of the RMX-2 zone.

Section 59-C-10.1 of the Montgomery County Zoning Ordinance establishes the RMX-2 Zone, identified as Residential-Mixed Use Development, Specialty Center. Division 59-C-10 does not include a purpose and intent section for the RMX (Residential Mixed-Use) Zone, and the term 'specialty center' is not defined in the Zoning Ordinance. The Planning Board also consulted the 1989 master plan and 2009 sector plan in order to address this finding. While the 1989 master plan recommends rezoning this Property from the I-1 Zone to the RMX Zone, neither document provides a purpose and intent statement for the RMX Zone.

Therefore, the Planning Board relies on the term 'Residential-Mixed Use Development' to help support its recommendation that the Application meets the general intent of the zone. Section 59-C-10.3.1 adds further guidance with the following language:

"This optional method of development accommodates mixed use development comprised of planned retail centers and residential uses, at appropriate locations in the County. This method of development is a means to encourage development in accordance with the recommendations and guidelines of approved and adopted master plans." and

"Approval of this optional method of development is dependent upon the provision of certain public facilities and amenities by the developer. The requirement for public facilities and amenities is essential to support the mixture of uses at the increased densities of development allowed in this zone"

The Project Plan amendment proposes a mixed use development with primarily residential uses (455 units including townhouses and multi-family units) and some

commercial uses (14,486 SF). The density and amenities achieved through the optional method of development help to realize the recommendations of the 2009 Approved and Adopted Germantown Employment Area Sector Plan, as described in Finding (b) below.

The public facilities and amenities provided are divided into three main areas: (1) the Green Commons with a tot lot, open play area II, and seating areas; (2) the southeast amenity area, which is enclosed by the multi-family buildings and includes a clubhouse with an indoor exercise room and an indoor community space, a swimming pool, a wading pool, a tot lot, open play area II, and seating areas; and (3) the southwest amenity area which surrounds a stormwater management (SWM) dry pond and includes a dog park, seating areas, and a pedestrian path. The Applicant has also proffered to reconstruct Waters Road with 31-foot wide pavement, curb and gutter, and street trees within the existing 51-foot right-of-way. Alternatively, if the full 70-foot right-of-way becomes available, Waters Road will be reconstructed with 38-foot wide pavement, curb and gutter, and street trees on both sides. Overall, these public facilities and amenities will support the mixture of uses at the increased densities proposed.

The Subject Property is zoned RMX-2, which is governed by the development standards in Section 59-C-10.3 of the Montgomery County Zoning Ordinance. The Staff Report contains a data table that lists the Zoning Ordinance required development standards and the development standards proposed for approval. The Board finds, based on the aforementioned data table, other uncontested evidence, and testimony of record, that the Application meets all of the applicable requirements of the RMX-2 zone under the optional method of development. The following data table sets forth the development standards approved by the Planning Board and binding on the Applicant.

Project Data Table for the RMX-2 Zone (Optional Method of Development)

Development Standards	Approved by the Planning Board and Binding on the Applicant (entire site)	Approved by the Planning Board and Binding on the Applicant (Subject Project Plan)
Site Area (acres)		
Gross Tract Area	<u>62.58</u>	
Phase I	(36.10)	
Phase II	(26.48)	26.48
Less Dedication for Public ROW	<u>7.06</u>	<u>3.12</u>
Water's Road	(0.77)	(0.77)
Waterford Hills Blvd	(5.39)	(2.35)
Father Hurley Blvd	(0.90)	(0.00)

Net Lot Area	<u>55.52</u>	
Phase I	(32.16)	
Phase II	(23.36)	(23.36)
Density		
Max. Commercial (FAR) [59-C-10.3.4]	0.005	0.01
Max. gross leasable (non-residential) floor area (SF) [59-C-10.3.5]	14,486	14,486
Residential D.U.s (> 30 acres site area) [59-C-10.3.6]	1,059 ^(a)	455
Max. Residential Density (du/acre) [59-C-10.3.7]	16.9	17.18
MPDUs [Chapter 25A]	14% (148 MPDUs) ^(a)	12.5% (57 MPDUs)
Max. Total FAR	<u>0.53 (1,435,229 SF)</u>	
Phase I	0.22 (586,536 SF)	
Phase II	0.31 (848,693 SF)	
- residential		<u>0.74 ^(b) (848,693 SF)</u>
- commercial		(828,707 SF)
- clubhouse		(14,486 SF)
		(5,500 SF)
Min. Green Area or outside amenity area [59-C-10.3.3]		
Residential	51.0% (31.9 ac.) ^(c)	50.0% (13.2 ac.)
Commercial		
Min. Building Setbacks (ft) [59-C-10.3.8]		
From one-family residential zoning	n/a	n/a
From residential zoning other than one-family (RMX-2/TS/RMX-2C) - Residential buildings - Commercial bldgs	To be determined at Site Plan ^(d)	
From Any Street - Residential buildings - Commercial bldgs	To be determined at Site Plan ^(e)	
From abutting commercial or industrial zoning (I-3/PD-15 Zone) - Residential buildings - Commercial bldgs	n/a	n/a
Max. Building Height (ft.) ^(f)		
Overall		
Townhouse		45
Multi-family		60
Parking (number of spaces) ^(g)		
Office	n/a	n/a

Retail	51 ^(h) (@ 3.5sp/1000)	51 (@ 3.5sp/1000)
Residential	1,589 ^(h)	737
1-Bedroom	525 (420 units)	150 (120 units)
2-Bedroom	642 (428 units)	249 (166 units)
3-Bedroom	422 (211 units)	338 (169 units)
Total spaces		
Required	1,640 ^(h)	788
Approved/Proposed	2,119 ^(h)	1,099 ^(g)

^(a) Site Plan 82003003B approved a maximum of 604 dwelling units including 91 MPDUs (or 15%). This approval superseded the project plan residential cap, therefore the tabulations for the entire site (2nd column in the table) were calculated using the approved 82003003B and the tabulations for the amended area (3rd column in the table).

^(b) Consistent with the 2009 Approved and Adopted Germantown Employment Area Sector Plan recommendations for this site (p.53).

^(c) Includes 18.74 acres of green space provided in Phase I.

^(d) The Planning Board defers the decision to reduce the minimum building setbacks by 50% until Site Plan approval. Although the RMX-2 zone is not a typical residential zone, for the purposes of this setback requirement it is considered a residential zoning other than one-family.

^(e) Minimum building setback from streets to be determined at site plan once the final cross-section and right-of-way dimensions for Waterford Hills Boulevard and Waters Road have been finalized.

^(f) According to the Germantown Urban Design Guidelines (June 2010), page 31.

^(g) The final number of parking spaces will be determined at the time of site plan approval when the bedroom mix has been finalized.

^(h) Totals based on numbers approved with Site Plan 820030030B which superseded the earlier project plan approval.

Pursuant to 59-C-10.3, the minimum green area requirement is 15% for the commercial portions of a site and 50% for the residential portions. Since the commercial portion of this development is minimal, located within the residential buildings, and has a lower green space requirement, the entire site was considered primarily residential and thus the minimum 50% requirement was applied to the entire site. This ensured that both the commercial and residential green area requirements were met. The Project Plan meets the requirement by providing 50% (or 13.2 acres) green space on site. Collectively, both phases of the entire development satisfy the green space requirement.

The proposed development meets the density requirements of the zone and recommendations in the Sector Plan. The overall density, proposed at 0.74 FAR for the 26.48-acre site, is slightly below the maximum density of 0.8 FAR recommended by the Sector Plan for this site (p.53). The commercial density proposed is well below the maximum 0.5 FAR allowed and the gross leasable floor area is well below the maximum 600,000 SF allowed. The residential density proposed at 17.18 du/ac is below the 30 du/ac allowed by the zone.

The Planning Board defers its decision to reduce the minimum building setback requirements for residentially zoned property, other than reducing one-family by 50%, until Site Plan approval, where the Applicant will request a reduction to the building setback for the multi-family residentially zoned property located along the northwestern edge of the project by 50% from 30 feet to 15 feet.

(b) The proposed development conforms to the 2009 Approved and Adopted Germantown Employment Area Sector Plan approved under Chapter 56.

The Project Plan is consistent with and in substantial conformance with the 2009 Approved and Adopted Germantown Employment Area Sector Plan (Sector Plan). The Project Plan:

- Conforms to the overall and specific land use guidelines of the Sector Plan;
- Is consistent with the flexible density provisions of the County Council's Resolution adopting the Sector Plan (SP p.102 and p.18 of Resolution) applicable to the Martens site and contained within the West End, Land Use recommendations (SP p.53);
- Follows the Sector Plan's RMX-2 zoning designation for the site; and includes commercial retail uses at a density significantly lower than the 0.5 FAR density maximum for the RMX-2 zone; and
- Is in conformance with the Urban Form (SP p.50-51) and June 2010 Germantown Urban Design Guidelines.

Applicable Sector Plan Goals, Objectives, and Provisions for Land Use

The primary Sector Plan guidance for the Martens Application, the 26.48 acre unbuilt portion of the property, is established in the Sector Plan's Land Use and Town Center/ West End Land Use plan exhibits (SP p.44-45). The designated land use for the property is Residential, mixed use (primarily residential).

- The proposed mixed use development with the majority of the land use as residential (455 residential units) and the inclusion of supporting commercial uses (14,486 square feet) follows these Sector Plan guidelines.

One of the key recommendations of the Sector Plan is to "[c]reate Germantown as a strategic location for employment in the County. Highway access and an eventual connection to a transit network will make Germantown accessible and attractive to employers." (SP p.45).

- The proposed mixed use Project Plan will contribute to these recommendations by helping transform this undeveloped area through a mix of uses that will support future employment uses nearby.
- The Martens development will also significantly improve the roadway infrastructure in this West End area near the MARC Station and adjacent to the future Commercial, mixed use (primarily commercial) land use designation for the Waters Road Triangle properties.

The Sector Plan places an emphasis on transit oriented, employment, and mixed use development in the Study Area (SP p.8-10, and p.44-45). Specifically, the Plan's vision includes the following:

- Germantown (as) the center of business and community life in upper Montgomery County (SP p.8); and
- (An) increase (in) employment (SP p.9)

Due to the Project Plan's emphasis on employment and during the initial review phases of the Application, Staff recommended and discussed with the Applicant the potential for an increase in the employment portion of the proposed land use mix. The Applicant analyzed the development mix for the Martens site and included convincing documentation related to the specific mix of uses proposed, including opinions from two real estate firms specializing in office and retail development. This information asserts the following:

- "[T]here appears to be no economic basis that any office space development would be economically feasible" for the Property, and
- The Applicant should be strongly discouraged from providing any additional retail footage above the (approx.) 14,000 sq. ft. originally proposed.

The Applicant has increased the proposed retail area from 13,984 sq. ft. to 14,486 sq. ft.

The Planning Board has determined that the land use mix proposed is consistent with the following Sector Plan recommendations regarding employment and mixed uses:

- Balance development with infrastructure capacity (SP p.10), and
- (Create) a transit centered community (SP p.44).

Sector Plan Density and Zoning Provisions

County Council Resolution No. 16-1126 approving the Sector Plan (SP p.102 and p.18 of Resolution) and the supporting land use provisions within the Urban Form sections of the Sector Plan (SP p.53) establish development density provisions for the Martens Property (TC-22) (TC-33) with the following text addressing both the Martens and adjacent Waters Road (TC-23) (TC-34) land areas:

- Redevelop the Martens and the Waters Rd. properties with a maximum of 420,000 sq. ft. of employment and retail and 400 dwelling units;
- Density distributed to permit up to 200,000 sq. ft. of commercial uses and 300 units on the Martens property and up to 220,000 sq. ft. of commercial uses and 100 units on Waters Rd. Triangle properties;
- The residential component may be increased with an offsetting decrease in commercial density so that the maximum density does not exceed 0.8 FAR;
- The Martens property should retain its RMX-2 zoning, while the Water Rd. Triangle properties should be rezoned to RMX-2C to ensure that existing businesses are conforming uses.

The Project Plan for Martens includes:

- 26.48 acres;
- 834,207 sq. ft. including residential and clubhouse uses
 - 828,707 sq. ft. of residential
 - 5,500 sq. ft. clubhouse
- 14, 486 sq. ft. of commercial uses on the first floor of two mixed use multi-family buildings
- A total of 848,693 sq. ft. for residential and commercial development

The resulting density for the total project is 0.74 FAR and is within the total 0.8 FAR allowance for the Property as established in the Sector Plan. The allowable 0.8 FAR provision of the Sector Plan (SP p.53) establishes flexibility to increase the specified residential unit totals for both of the designated Martens and Waters Road properties.

- The proposed residential FAR and density increase allowance is consistent with the Residential, mixed use (primarily residential) Land use category designated for the Property in the Sector Plan's Land Use and Town Center/ West End Land Use plans (MP p.44-45).
- The Application meets the offsetting provision for commercial uses in the Sector Plan, although additional commercial density on the Martens property would have been preferred. The proposed commercial area is significantly less than both the 200,000 sq. ft. referenced in the Sector Plan and the allowable 0.5 FAR of commercial use allowed in the RMX-2 zoning category for the Property. The 0.5 commercial FAR maximum for RMX-2 would allow 576,734 sq. ft. of commercial uses for the 26.84 ac. Martens site.

Primary form and access Sector Plan exhibits applicable to the Martens property are included in the "Street Character, Roadway Network, West End Land Use, and Town Center Urban Form" sections of the Sector Plan, and in the Buildings diagram within the Design Guidelines.

These referenced Sector Plan exhibits include roadway access location and land use diagrams for the Martens property:

- Coordination involving the Applicant, M-NCPPC Staff, MCDOT staff, and owners of the southern section of the adjacent Waters Road triangle properties has resulted in agreements that will allow roadway plans for these adjacent properties to develop consistent with the Sector Plan locations and guidelines.

Design Guidelines / Buildings Form Diagram (SP Design Guidelines, p.31)

The following guidelines from this exhibit are described together with responses of how the Project Plan meets the guidelines:

"Building setbacks should be primarily 20 to 25 feet along most streets, 30 to 35 feet along MD 118, and 15 to 20 feet along streets with right of way of 100 feet (or) less"

- The Project Plan conforms to the Guidelines for building setbacks of 20-25 feet along most streets as measured from the curb. On Waters Road, which has a right of way of less than 100 feet, the building setbacks will be a minimum of 20 feet as measured from the curb.

"Maximum building heights should be located around the transit station, stepping down toward the edges of the district."

- The taller multifamily buildings are located along Waters Road and are a maximum of 60 ft. high. The townhouses located to the west of the multifamily buildings step down in building heights and will be a maximum of 45 ft. high.

Building heights of up to 60 feet at the subject site.

- No building will exceed 60 feet in height.

Streetscape pedestrian promenades continuous along the access roadways between the streets and the adjacent street frontage of the building forms

- The Project Plan, with buildings fronting the streets, meets this guideline.

(c) Because of its location size, intensity, design, operational characteristics and staging, the proposed development is compatible with and not detrimental to existing or potential development in the general neighborhood.

The site is located on the west end of the Germantown Town Center area abutting the CSX tracks and within a ½ mile radius of the MARC Station. The proposed mixed-use development includes four multi-family buildings with a combined total of 286 dwelling units and 170 townhouses. The 14,486 square feet of commercial uses are distributed in the ground floor of Buildings 1 and 3. Overall, this development proposes a 0.74 FAR. The residential density proposed at 17.2 du/ac is comparable to the residential density at Fairfield of Germantown at 16.8 du/ac. The location, size and intensity are compatible with existing and potential development in the general neighborhood.

The project is oriented along a principal east-west axis – Waterford Hills Boulevard – providing a connection between Father Hurley Boulevard and Waters Road. Several north/south internal connections complete the grid network of streets around which the residential units are proposed. The grid network facilitates vehicular and pedestrian movement through and within the project and the general neighborhood.

Buildings along the central boulevard provide a strong street edge and are oriented towards the street with rear-loaded garages. Buildings along the north/south internal connector streets are mostly front loaded with rear yards and green space in the rear. The 4-story multi-family buildings with a maximum height of 60 feet are oriented to Waters Road as recommended in the Sector Plan. The design, orientation, and intensity of uses provide a desirable and compatible transition between the existing residential development to the west and the more commercial uses to the east of Waters Road and along MD 118.

Compatibility with the CSX tracks and mitigation of the effects caused by this proximity is achieved through the design and locations of the various buildings and amenities on site. The SWM pond is proposed to be moved to the southeast corner of the site abutting the tracks, which effectively increases the separation between the townhouses (north of the pond) and the tracks. Noise mitigation measures will be implemented to buffer noise from the townhouse buildings at the far south of the project. A parking structure is proposed against the CSX tracks to help buffer noise for the multi-family buildings.

The operational characteristics are compatible with, if not improved, for the existing residential community at Fairfield at Germantown. Waterford Hills Boulevard will be extended through the Subject Property and connect to Waters Road. This will provide more direct access to MD 118 (via Wisteria Drive). The development will also provide a sidewalk/path system to the MARC Station. This development will add

more residential at the edges of the town center which will enhance the viability of nearby retail, restaurant, and service-oriented businesses.

The staging of the project will be compatible with and not detrimental to existing or potential development in the general neighborhood. The project will be developed in five phases, which will be defined in greater detail at the time of site plan. Conceptually, the projected phases are as follows:

- Phase I: Pre-construction activities and road infrastructure, including:
 - Removal of contaminated soils from the Property;
 - Relocation of the existing stormwater management pond;
 - Relocation of existing utilities;
 - Construction of Waterford Hills Boulevard extension through the Property;
 - Widening and construction of Waters Road between Wisteria Drive and Waterford Hills Boulevard.
- Phase II: Construction of Buildings 1-3 (multi-family residential) and their associated parking
- Phase III: Construction of townhouses located in the southwestern portion of the Property and associated parking
- Phase IV: Construction of Building 4 (multi-family residential) and its associated parking
- Phase V: Construction of the remainder of the townhouses located in the northeastern portion of the Property and associated parking

(d) The proposed development does not overburden existing public services nor those programmed for availability concurrently with each stage of construction and, if located within a transportation management district designated under Chapter 42A, article II, is subject to a traffic mitigation agreement that meets the requirements of that article.

The Project Plan will not overburden existing public facilities and services nor those programmed for availability concurrently with each stage of construction. The proposed staging program provides a timely provision of services. The Project Plan satisfies the LATR/PAMR requirements of the Adequate Public Facilities (APF) review. The Property is not located within a transportation management district.

Local Area Transportation Review (LATR)

Ten intersections, identified as critical intersections affected by the proposed development, were examined in the traffic study to determine whether they meet the applicable congestion standards for this area. The congestion standards in the Germantown West and Germantown Town Center Policy Areas are 1,425 and 1,600 Critical Lane Volumes (CLV), respectively. The traffic analysis indicated that all examined intersections in the study area are currently operating at acceptable CLV

standards during the weekday morning and afternoon peak hours and will continue to operate satisfactorily with the proposed development. Therefore, the Application meets the LATR requirements of the APF review. The result of the CLV analysis is summarized in Table 1.

Table 1: Calculated Critical Lane Volume Values at Studied Intersections

Intersections Analyzed	Existing		Background		Total	
	AM	PM	AM	PM	AM	PM
Father Hurley Blvd/ Middelbrook Rd	812	977	1318	1276	1329	1291
Father Hurley Blvd/ Wisteria Dr	833	789	864	1086	856	814
Father Hurley Blvd/ Dawson Farm Rd	452	537	459	612	462	614
Father Hurley Blvd/ Hopkins Rd	330	427	548	741	549	743
MD 118/ Father Hurley Blvd Extension	N/A	N/A	545	777	551	784
MD 118/ Dawson Farm Rd	779	844	665	696	668	704
MD 118/ Wisteria Dr	911	1312	717	952	804	1074
MD 118/ Middlebrook Rd	969	1210	953	1247	1025	1316
MD 119/ Wisteria Dr	641	966	713	973	715	984
Waters Rd/ Wisteria Dr	463	468	293	360	595	663

Policy Area Mobility Review (PAMR)

A PAMR study is not required for the project because the project is located in the Germantown Town Center Policy Area, which does not require trip mitigation according to the current Growth Policy.

Adequacy of rights-of-way

The Applicant proposes a reduction of rights-of-way for Waterford Hill Boulevard from 112 to 104 feet and for Waters Road from 80 to 70 feet. The Applicant submitted a technical analysis justifying the proposed right-of-way reduction. Based on the technical analysis, even with the proposed right-of-way reduction on both Waterford Hills Boulevard and Waters Road, the roads would continue to provide adequate levels of service and traffic operation with the full development of the Martens property and buildout of the Sector Plan roadways. The right-of-way for

Waters Road in the Germantown Sector Plan is 70 feet according to the referred cross-section of the Sector Plan's right-of-way table. Therefore, the Planning Board conceptually supports the proposed reduction of the rights-of-way for Waterford Hills Boulevard and Waters Road with the final cross-section and right-of-way dimensions to be finalized in coordination with MCDOT using the new Context Sensitive Design standards at the time of preliminary plan approval.

Pedestrian and vehicular circulation

The road network within the project and in the area surrounding the Property will be adequate to meet the traffic generated by the Project Plan. The proposed access points on Father Hurley Boulevard and Waters Road are adequate to accommodate the site-generated traffic. The proposed vehicular and pedestrian circulation systems are adequate, safe and efficient.

Other Public Facilities and Services

There is adequate public water and sewer capacity to serve the project. The Project Plan has been reviewed by the Montgomery County Fire and Rescue Service who have preliminarily determined that the Property has appropriate access for fire and rescue vehicles, subject to further refinement at the time of preliminary plan and site plan approvals.

The Subject Property is located in the Northwest School Cluster, which currently has adequate school capacity at the high school level. Although the Northwest School Cluster has inadequate school capacity at the elementary and middle school levels, the Northwest School Cluster permits new residential development subject to a school facility payment, which the Applicant is willing to provide. The Annual School Test effective July 1, 2011 indicates that the Northwest Cluster will have inadequate school capacity at the elementary and high school levels. Thus after July 1, 2011, a School Facility Payment is required for residential development at the elementary and high school levels. A future preliminary plan application seeking Planning Board approval after July 1, 2011 will be subject to the Annual School Test results effective for FY12, as noted above.

(e) The proposed development is more efficient and desirable than could be accomplished by the use of the standard method of development.

The proposal to develop under the optional method of development is more efficient and desirable than the standard method of development. The standard method for RMX-2 zones must comply with the standards and requirements of the R-200 zone. The standard method yields lower density, greater setbacks, larger lots, no public amenities or open space, and a single-family housing type, all in stark contrast to the recommendations of the Sector Plan. The average density for R-200 is no more than 2.0 du/ac versus the density recommended in the Sector Plan. A density of 2.0 du/ac

is insufficient to reach the critical mass and density envisioned for the west end of the Town Center and areas within ½ mile radius of the MARC Station. The Project Plan proposes residential development at more than 17 du/ac.

Additionally, under the standard method of development the requirement for public facilities and amenities would be removed. The Project Plan is providing several public facilities and amenities divided into three main areas: (1) the Green Commons with a tot lot, open play area II, and seating areas; (2) the southeast amenity area, which is enclosed by the multi-family buildings, and includes a clubhouse with an indoor exercise room and an indoor community space, a swimming pool, a wading pool, a tot lot, open play area II, and seating areas; and (3) the southwest amenity area, which surrounds a SWM dry pond and includes a dog park, seating areas, and a pedestrian path. In addition, the Applicant has also proffered to reconstruct Waters Road with 31-foot wide pavement, curb and gutter, and street trees within the existing 51-foot right-of-way. Alternatively if the full 70-foot right-of-way becomes available, Waters Road will be reconstructed with 38-foot wide pavement, curb and gutter, and street trees on both sides. Overall, these public facilities and amenities will support the mixture of uses at the increased densities proposed. Given the recommendations of the Sector Plan and the site's proximity to transit, employment and services, the optional method of development is much more desirable and efficient for this particular site.

(f) The proposed development includes moderately priced dwelling units in accordance with Chapter 25A of this Code.

The Project Plan provides 12.5% of the total density as moderately priced dwelling units (MPDUs) onsite, consistent with the requirements of Chapter 25A. A final agreement between the Applicant and the Department of Housing and Community Affairs will be required at the time of site plan review.

The original project plan approved 15% of the base density as MPDUs onsite. This allowed a 22% density bonus above the base density of 500 dwelling units for the site as established by the 1989 Germantown Master Plan. Thus, the original project plan approved 610 dwellings units including 92 MPDUs. Phase I of the project plan was built according to Site Plan No. 82003003B, which limited the residential density to 604 dwelling units including 91 MPDUs (or 15%). The MPDU requirement of the original approval was fulfilled by having 15% MPDUs consistently applied to Phase I. The current Application for Phase II is consistent with the density cap in the 2009 Sector Plan for the Germantown Employment Area. The Application does not request a density bonus and therefore is not required to provide MPDUs beyond the 12.5% requirement of Chapter 25A.

- (g) When a Project Plan includes more than one lot under common ownership, or is a single lot containing two or more CBD zones, and is shown to transfer public open space or development density from one lot to another or transfer densities, within a lot with two or more CBD zones, pursuant to the special standards of either section 59-C 6.2351 or 59-C 6.2352 (whichever is applicable), the Project Plan may be approved by the Planning Board.**

The Application does not propose any transfers of public open space or development density from one lot to another.

- (h) The proposed development satisfies any applicable requirements for forest conservation under Chapter 22A.**

As conditioned, the Project Plan satisfies the applicable requirements for forest conservation under Chapter 22A. The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) #420111000 for the 26.48-acre site (Phase II) was approved on January 25, 2011. The proposed Forest Conservation Plan (FCP) does not propose to clear, retain, or afforest any area on-site. The forest conservation worksheet generates a 2.37-acre afforestation requirement. As conditioned, the afforestation requirement should be met by using either on-site or off-site methods rather than through fee-in-lieu. In addition, the Planning Board recommends that the 0.34 acres of Stream Valley Buffer ("SVB") on site should not be placed into a Category I conservation easement. This small and isolated section of SVB will not provide any additional protection to the stream since the stream is on the opposite side of the CSX railroad tracks.

Forest Conservation Variance

Section 22A-12(b)(3) of the County Code requires applicants to identify certain trees, shrubs, plants, and specific areas as priority for retention and protection. This section of the code requires those areas to be left in an undisturbed condition unless the Applicant obtains a variance in accordance with Chapter 22A-21 of the County Code. The law prohibits impact to and requires the retention and protection to the greatest extent possible of all trees that measure 30 inches diameter at DBH or greater; any tree designated as the county champion tree; trees with a DBH 75% or greater than the diameter of the current State champion for that species; and rare, threatened and endangered species.

Under Chapter 22A-21 of the County Code a person may request in writing a variance from this Chapter if the person demonstrates that enforcement would result in unwarranted hardship to the person. The Applicant for a variance must:

- (1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship;
- (2) Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;
- (3) Verify that State water quality standards will not be avoided or that a measurable degradation in water quality will not occur as a result of the granting of the variance; and
- (4) Provide any other information appropriate to support the request.

Because this project will require impact to one tree and the removal of five trees 30 inches and greater DBH, the Applicant must obtain a variance. The Applicant is providing some tree preservation measures to help ensure that the impacted tree will survive construction.

County Arborist's Recommendation

In accordance with Montgomery County Code, Section 22A-21(c), the Planning Department referred a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a written recommendation prior to acting on the request. The request was forwarded to the County Arborist on April 25, 2011. On May 7, 2011, the County Arborist issued her recommendations on the variance request. The County Arborist's recommendation for the variance request was favorable, but included a recommendation for mitigation of the impacts.

Unwarranted Hardship Basis

The residential and commercial development proposed on this Property is a permitted use in the RMX-2 zone and recommended by the Sector Plan. Previously, the Board approved a forest conservation plan for this site with development encompassing the entire site. While the approved plan for this portion of the site expired, the development pattern proposed was always envisioned. Protecting the trees subject to the variance provision, by either not allowing impacts or removal, would cause major changes to the proposed plan and would be detrimental to the overall development of the multi-family units and commercial area within ¼ mile of the MARC Station.

Variance Findings

The Planning Board must make findings that the Applicant has met all requirements of Chapter 22A-21 before granting the variance. The Planning Board has made the following determination on the required findings:

1. *Will not confer on the Applicant a special privilege that would be denied to other applicants;*

Granting the variance will not confer a special privilege on the Applicant as the disturbance and removal of the specimen trees noted above are the minimum necessary in order to develop the Property as illustrated on the Project Plan.

2. *Is not based on conditions or circumstances which are the result of the actions by the Applicant;*

The requested variance is not based on conditions or circumstances which are the result of actions of the Applicant. The variance is based on the topography of the site and the proposed density as recommended in the Sector Plan, and only impacted and/or removed as much as necessary to achieve the goals for the site.

3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property;*

The requested variance is a result of the proposed development and not a result of land or building use on a neighboring property.

4. *Will not violate State water quality standards or cause measurable degradation in water quality.*

The requested variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being disturbed and/or removed are not within a stream buffer, wetland, or a special protection area. The Applicant proposes to use sediment and erosion control methods as part of a Stormwater Management Concept Plan, which has been submitted to and is under review by the Montgomery County Department of Permitting Services.

Forest Conservation Variance mitigation

Although there will be some disturbance within the critical root zone (CRZ) of Tree 9 on-site, this tree is a good candidate for safe retention. Therefore, this tree should be retained. Trees 5 and 10 are in very poor condition and in declining health even if no development was proposed. For this reason, the Planning Board recommends removal of trees 5 and 10 with no mitigation. Trees 2, 3, and 4 are in fair to good health, not within existing forest, and are only being removed as a result of the development of the site. The development of this site will significantly alter the hydrology that presently supports the survival of these three trees. Because of the

change in hydrology and the limited potential for long term survival of these trees, the Planning Board recommends mitigation.

Mitigation should be at a rate that approximates the form and function of the trees removed. Therefore, the Planning Board recommends that replacement occur at a ratio of approximately 1" DBH for every 4" DBH removed, using trees that are 2" to 3" DBH. This means that for the 102 caliper inches of trees removed, the Applicant will mitigate with nine 3" DBH native canopy trees on the site. While these trees will not be as large as the trees lost, they will provide some immediate canopy and will help augment the canopy coverage and eventually fill in open areas of the forest where the large trees have been removed. All mitigation plantings should be specifically labeled and detailed on the revised Forest Conservation Plan.

(i) The proposed development satisfies any applicable requirements for water quality resources protection under Chapter 19.

The Applicant submitted a stormwater management concept for the Project to the Montgomery County Department of Permitting Services, Water Resources Section, on October 21, 2010, which is currently under review and will need to be approved prior to preliminary plan approval.

(j) Any public use space or public facility or amenity to be provided off-site is consistent with the goals of the applicable Master or Sector Plan and serves the public interest better than providing the public use space or public facilities and amenities on-site.

The Project Plan will significantly improve the proposed areas within the future right-of-way for Waters Road and Waterford Hills Boulevard. On Waterford Hills Road, the project will provide a landscaped median, closely spaced street trees, pedestrian oriented street lighting, and a wide sidewalk. On Waters Road, the Project Plan will also provide closely spaced street trees, pedestrian oriented street lighting, and a wide sidewalk on the west side and partial treatment of the east side depending on the available right-of-way. If the full right-of-way becomes available, full streetscaping will also be provided on the east side of Waters Road.

The proposed improvements to the public-of-way are consistent with the recommendations in the Germantown Sector Plan and the Design Guidelines. The landscape median, sidewalks, bikeway and the streetscaping are all recommended in the Germantown Sector Plan (pages 32, 33, 36 and 38).

The enhanced landscaping in the median along Waterford Hills Road, and the streetscaping along both sides of Waterford Hills Road and Waters Road are public facilities and amenities in addition to the minimum requirements in the Road Code. These improvements will be included in a maintenance agreement with Montgomery County.

The improvements within the public-right of way are necessary to provide access to the existing MARC Rail Station and the commercial area of the Germantown Town Center. They also significantly enhance pedestrian connections between dwelling units within the project and improve the character of the Germantown area. These improvements will foster the creation of a pedestrian oriented environment in the public interest for the Germantown area.

BE IT FURTHER RESOLVED that all elements of the plans for Project Plan No. 92002002B, Martens Property stamped received by M-NCPPC on April 22, 2011 are required except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board and incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED that this Project Plan shall remain valid as provided in Montgomery County Code § 59-D-2.7; and

BE IT FURTHER RESOLVED that the date of this Resolution is SEP 19 2011 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

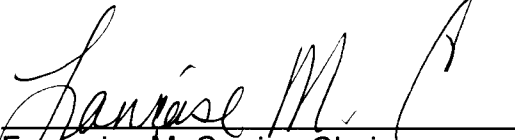
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CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Presley, seconded by Vice Chair

MCPB No. 11-53
Project Plan No. 92002002B
Martens Property
Page 22

Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor of the motion, at its regular meeting held on Thursday, September 8, 2011, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board